Further the USCIS policy manual sets forth in detail the stringent evidentiary requirements to qualify for this visa category. (See attached Exhibit H USCIS Policy Manual sections on the qualifications required for an individual to establish that they are an alien of extraordinary ability)

Mr. Formica's qualifications as an expert must be questioned when he makes such an unfounded assertion that “Danilo’s engagement in a STEM career may also have made him eligible for an exceptional ability visa such as O-visa...”

;The same must be said about Mr. Formica's bald assertion that by Danilo engaging in a STEM career that this may have also made him eligible for a National Interest Waiver or his further assertion on page 19 that “generally published scholars are approved for this waiver." Once again Mr. Formica gives not one scintilla of evidence or support for this statement.

As set forth in footnote 31 on page 8 of my expert opinion report in discussing National Interest Waivers pursuant to 8 U.S.C. § 1153(b)(2)(B):

“The threshold criteria to obtain a national interest waiver of the labor certification requirement for [1153(b)(2)] are very difficult to qualify for. Matter of Dhanasar, 26 I&N Dec. 884 (AAO 2016) set forth the threshold criteria for a waiver: (1) that the foreign nationals proposed endeavor has both substantial merit and national importance; (2) that he or she is well positioned to advance the proposed endeavor and; (3) that on balance, it would be beneficial to the U.S. to waive the job offer and labor certification requirements.

To state that … ”generally published scholars are approved for this waiver”… shows a complete lack of understanding of what such a waiver requires.

Merely because a scholar has had their work published does not qualify them for a National Interest Waiver pursuant to Matter of Dhanasar. (See Matter of Dhanasar attached as Exhibit I)

On page 21 under article III Mr. Formica states in pertinent part:

“It is more likely than not that, if he meets program requirements, Danilo would have qualified and will now qualify for permanent residency and a Green Card in the United States under the Immigrant Investor Program…”

These assertions and opinions are made without any supporting evidence or documentation and are totally speculative. They are in no way a rebuttal to what was stated in my expert opinion report or in my deposition.

Mr. Formica on page 21 then cites to my description of the immigrant investor category on pages 10 - 11 of my expert opinion report. In that description I state in the last sentence of the first paragraph of my description quoted on page 21 of Mr. Formica's report:

"I have not seen any evidence that Danilo Bracho satisfies these requirements and whether he may in the future is speculative."

My expert opinion report was issued on October 1, 2019 and my deposition was taken on November 6, 2019.

After setting forth my description of the investor visa category from pages 10 - 11 of my expert opinion report, Mr. Formica in the beginning of the last paragraph of his report at page 22 improperly and in error states that:

"Mr. Reiner's description of the program is out of date."

The changes to the immigrant investor program did not take place until 11/21/2019 close to two months after my expert opinion report was issued.

This improper and erroneous statement once again brings into question whether Mr. Formica has the ability and knowledge to be an expert witness.

The proper role of an expert witness is to report on the law, policy and regulations that exist at the time the report is issued. To do otherwise would be improper.

Nevertheless it should be noted that the new investor regulations that went into effect on 11/21/2019 would make it harder for someone to qualify for permanent residence as an investor as the amount of capital required to be invested was increased from 1 million to 1.8 million dollars and can only be reduced for an investment in a targeted employment area to $900,000 instead of $500,000. (See USCIS printout of the changes to the EB-5 program that went into effect on 11/21/2019 Exhibit J)

At the top of page 23 of Mr. Formica's report he states:

"But I agree with Mr. Reiner's implied conclusion that if Danilo satisfies the requirements of this program, including any requirements concerning the source of the invested funds, then, more likely than not, he would be able to obtain full permanent residence."

This statement is totally false and I have never made any such implied conclusion either in my expert opinion report or in my deposition. This brings into question whether Mr. Formica, who alleges himself to be an expert, even read my report or transcript of my deposition as he professed to have done.

Mr. Formica then states in the last sentence of the first paragraph on page 23:

"Assuming Danilo's financial eligibility for an EB-5 visa (using funds already available to him and/or funds acquired as a result of a judgment in this case) it is more likely than not that he would receive this benefit."

This once again is a completely unfounded assertion made without any supporting evidence or documentation. It is not a rebuttal to my expert opinion report and is contrary to Mr. Formica's stated purpose for his report found on page 1 number 4 where he states the purpose of his report is to:

offer expert rebuttal opinions concerning:

(4) Danilo Bracho's past and present ability to obtain permanent resident status/green card through investment...

In fact at David Bracho's deposition on September 22, 2020 he refused to answer any questions regarding the family's wealth.

It must be noted that one of the basic requirements for obtaining an Investor Visa is that the applicant must prove that the funds they are investing have come from lawful means.

Any assets used for an investment that were acquired directly or indirectly by unlawful mean such as criminal activity, will not be considered capital for an investment under the EB-5

program 8 C.F.R. § 204.6(j)(3)(i-iv); Matter of Soffici, 22 I&N Dec. 164 – 165 (AAO, 1998); Matter of Izummi, 22 I&N Dec. 194 – 195 (AAO, 1998) .

Mr. Formica then shows a chart at the top of page 24 of his report which interestingly indicates that for the 2019 fiscal year there was an increase in the denial rate of investor petitions by almost 30%.

The increasing difficulty in obtaining approval of residence under the EB-5 program has been widely recognized. (See Exhibit C at pages 7 & 8 and Exhibit K, Report by Baker Donelson Law Firm)

On page 24 to the top of page 25 of Mr. Formica's report he opines in a totally new and wildly speculative assertion without any supporting evidence or documentation that if Danilo remained in the United States as a student, he would meet and marry a U.S. citizen and be able to obtain a green card through marriage.

This pure speculation is certainly not befitting of any individual who professes to be an expert.

At article IV of Mr. Formica's report on page 25 he states in the headnote:

"Mr. Reiner's opinions about Danilo's alleged 'misrepresentation' and the effect of any such 'misrepresentation' are incorrect and purely speculative."

Mr. Formica's rebuttal is once again rife with inaccuracies both in the facts and law.

The facts in this matter establish that Danilo Bracho committed a willful misrepresentation when he completed and executed form I-94W for entry to the U.S. under the visa waiver program on November 16, 2016.

As set forth in my expert opinion report with exhibits and in my deposition, the Kent School advised David Bracho on September 9, 2016 that if Danilo did not attend school for a full course of study on September 12th that he would have 30 days to leave the U.S. That communication further advised that if he did not attend class, that an "authorized withdrawal" would be marked in the government database.